IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.701/2000

Basant Kumar **Versus** State & Ors.

DATE OF ORDER :: 03/08/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. S.K. Jain, for petitioner
Mr. Arun Sharma, P.P.
Mr. Manoj Sharma, for respondents

***

Instant petition has been filed assailing the order dated 5th August, 2000 whereby application filed by Public Prosecutor u/s.319 Cr.P.C. was rejected by learned trial Judge under order impugned.

Facts, which are relevant for adjudication of the dispute, are that PW-2 Mukut Behari lodged a complaint in Police Station, Bundi on 27th April, 1990 in which it was alleged that near Champa Garden, the respondents along with few others namely; Prem Shanker Khati, Bheru, Purshottam & Ashok Tayar, pelted stones upon Basant on account of which he was injured. The incident is of 27th April, 1990, statement of Mukut Behari u/s.164 Cr.P.C. was recorded on 01.09.1990 and was produced in Court on 25th September, 1997. It was stated in the application, which was filed u/s.319 Cr.P.C. on 23rd October, 1998 by Public Prosecutor, that during investigation and so also during trial,

three persons were specifically named by the complainant. By that time, the statements of accused were also recorded.

Learned trial Judge after taking into consideration the material, did not consider appropriate to implead them as accused at this stage and accordingly, rejected their application u/s.319 Cr.P.C.

It has also been brought to the notice of this court that the accused Bherulal and Ashok have been finally convicted u/s.325 IPC and appeal preferred by them against conviction is pending in this court.

I have considered the submission of both the counsel and perused the order impugned.

Learned trial Judge has taken note of the statements of complainant and so also of other material came on record and after prima facie appreciation thereof, does not find substance to implead them as accused in pending criminal case where the trial was concluded and the matter was fixed for final arguments.

The judgments reported in 2002 (2) WLC-599 & RCC 2005 (1)-91 on which counsel for petitioner placed reliance, are not of any assistance in the facts of instant case.

This court does not find any error committed by learned Judge in passing order impugned and apart from it, this fact cannot be ruled out that pending misc. petition, trial against the accused respondents was finalized and being convicted u/s.325 IPC, appeal has been preferred against the said conviction, which is pending in this court. This court does not find any justification to interfere in the order impugned.

Consequently, the misc. petition stands dismissed.

[AJAY RASTOGI],J.

FRBOHRA,JR.P.A.